FRED A. RISSER
President
Wisconsin State Senate

April 1, 2009

Senator Jim Sullivan, Chair
Senate Committee on Veterans and Military Affairs, Biotechnology, and Financial Institutions
15 South, State Capitol
Madison, WI 53702

Dear Senator ~~Sullivan,~~ Jim

Thank you for holding a hearing on Senate Bill 31, which I have authored. Rep. David Cullen is the lead Assembly sponsor of this measure and introduced the Assembly companion bill, Assembly Bill 58.

The purpose of this bipartisan bill is to implement the Uniform Prudent Management of Financial Institutions Act in Wisconsin. The Act was promulgated by the National Conference of Commissioners on Uniform State Laws. I am a Uniform Law Commissioner as is Rep. Cullen.

Currently, the law that governs the management and investment of charitable funds and endowment spending is the Uniform Management of Institutional Funds Act (UMIFA) which was adopted by the National Conference of Commissioners on Uniform State Laws in 1972 and adopted by Wisconsin in 1975. UMIFA has been enacted in 47 other states. UMIFA provided uniform and fundamental rules for the investment of funds held by charitable institutions and the expenditure of funds donated as "endowments" to those institutions.

However, prudence standards have evolved since 1972 and the National Conference of Commissioners on Uniform State Laws subsequently adopted a successor Act, the Uniform Prudent Management of Institutional Funds Act (UPMIFA). UPMIFA has already been enacted in 29 states including Indiana, Iowa, and Minnesota, and the District of Columbia; Senate Bill 31 will enact UPMIFA in Wisconsin.

The standard for investing and managing charitable funds is one of prudence and UPMIFA reflects this in taking language from both the Uniform Prudent Investor Act (a trust law statute now adopted in 44 states, including Wisconsin) and Revised Model Nonprofit Corporation Act (RMNCA). The RMNCA provides a prudent standard and its language states that a manager must act, "in good faith and with the care an ordinary prudent person in a like position would exercise in similar circumstances."

I appreciate your willingness to schedule this measure for a public hearing and I encourage the committee to look favorably upon this important legislation.

Most sincerely,

Fred

FRED A. RISSER
President
Wisconsin State Senate

FAR:tet
Cc: Senate Committee on Veterans and Military Affairs, Biotechnology, and Financial Institutions

Testimony before the Senate Committee on Veterans and Military Affairs, Biotechnology and Financial Institutions
Regarding Senate Bill 31- Uniform Prudent Management of Institutional Funds Act
April 1, 2009

Good morning Chairman Sullivan and members of the Committee. My name is Mary Czech-Mrochinski, and I am here today to testify in favor of Senate Bill 31 on behalf of Marquette University.

We are pleased that Senator Risser and Representative Cullen have introduced Senate Bill 31 relating to implementing the Uniform Prudent Management of Institutional Funds Act (UPMIFA) here in Wisconsin. As you may already know, 30 states and the District of Columbia, including Minnesota, Iowa and Indiana, have already enacted the UPMIFA legislation. An additional 15 states, including Wisconsin, Illinois and Michigan, have introduced the UPMIFA legislation in 2009.

The UPMIFA Act was promulgated by the 117 year old-profit unincorporated association National Conference of Commissioners on Uniform State Laws.

Currently, the law that governs the management and investment of charitable funds and endowment spending is the Uniform Management of Institutional Funds Act (UMIFA) which was adopted by the NCCUSL in 1972 and adopted by Wisconsin in 1975. UMIFA has been enacted in 47 other states.

However, UMIFA no longer reflects the prudence standards that have evolved over time and as such the NCCUSL has adopted the Uniform Prudent Management of Institutional Funds Act (UPMIFA). Under NCCUSL procedures, each uniform act is years in the making. Sandy Wilcox, Executive Director of the UW Foundation can testify to this as he served on the UPMIFA drafting committee.

UPMIFA modernizes rules reflecting the universal use of a portion of "total return" as the right measure for the expenditure of institutional funds. The rules adopted under UPMIFA also allow institutions the ability to cope more easily with fluctuations in the market and in turn the value of the endowment.

UMIFA updated the old trust law concept that only interest and dividends could be spent by allowing asset growth to be appropriated for purposes as long as a fund did not go below its "historic dollar value." UPMIFA builds upon UMIFA's rule of appreciation of assets but eliminates the concept of "historic dollar value" thereby allowing for greater flexibility and focusing on a prudent standard.

The standard for investing and managing charitable funds is one of prudence and UPMIFA reflects this in taking language from both the Uniform Prudent Investor Act (UPIA (a trust law statute now adopted in 44 states, including Wisconsin) which reflects Modern Portfolio Theory and Revised Model Nonprofit Corporation Act (RMNCA). The

RMNCA provides a prudent standard and its language states that a manager must act, "in good faith and with the care an ordinary prudent person in a like position would exercise in similar circumstances."

The current, UMIFA and the proposed UPMIFA, apply to the management and investment of charitable and endowment spending not only at colleges and universities but also to organizations ranging from hospitals to local community foundations. UPMIFA provides guidance and authority to charitable organizations concerning the investment of funds held by these organizations but also imposes additional duties on those that manage these charitable funds. These management duties provide additional protections for the charities, but perhaps more importantly, also protects the interests of the donors who want to see their contributions used wisely.

Again, I would respectfully request your support of Senate Bill 31. This concludes my testimony and I would be happy to answer any questions the Committee may have at this time.

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TO: All Legislators

FROM: Don Nelson, University of Wisconsin- Madison, (608) 265-4105
Mary Czech-Mrochinski, Marquette University, (414) 288-3969

SUBJECT: Support of Senate Bill 31 (Sen. Risser) and Assembly Bill 58 (Rep. Cullen), The Uniform Prudent Management of Institutional Funds Act (UPMIFA)

Date: March 31, 2009

We respectfully are requesting your support of Senate Bill 31 and Assembly Bill 58 relating to implementation of the Uniform Prudent Management of Institutional Funds Act in Wisconsin. The Act was promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL is a 117 year old non-profit unincorporated association, comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands . UPMIFA has already been enacted in 26 states including Indiana, Iowa, and Minnesota).

Currently, the law that governs the management and investment of charitable funds and endowment spending is the Uniform Management of Institutional Funds Act (UMIFA) which was adopted by the NCCUSL in 1972 and adopted by Wisconsin in 1975. UMIFA has been enacted in 47 other states.

However, UMIFA no longer reflects the prudence standards that have evolved over time and as such the NCCUSL has adopted the Uniform Prudent Management of Institutional Funds Act (UPMIFA). LRBs 0221 & 1481 will enact UPMIFA in Wisconsin.

Under NCCUSL procedures, each uniform act is years in the making. According to NCCUSL:

The process starts with the Scope and Program Committee, which initiates the agenda of the Conference. It investigates each proposed act, and then reports to the Executive Committee whether a subject is one in which it is desirable and feasible to draft a uniform law. If the Executive Committee approves a recommendation, a drafting committee of commissioners is appointed. Drafting committees meet throughout the year. Tentative drafts are not submitted to the entire Conference until they have received extensive committee consideration. Draft acts are then submitted for initial debate of the entire Conference at an annual meeting. Once the Committee of the Whole approves an act, its final test is a vote by states—one vote per state. A majority of the states present, and no less than 20 states, must approve an act before it can be officially adopted as a Uniform or Model Act. At that point, a Uniform or Model Act is officially promulgated for consideration by the states.

Sandy Wilcox, Executive Director of the UW-Madison Foundation, served on the UPMIFA drafting committee. Sandy is available to meet with legislators and staff or answer questions they may have about this process.

UPMIFA modernizes rules reflecting the universal use of a portion of "total return" as the right measure for the expenditure of institutional funds. The rules adopted under UPMIFA also allow institutions the ability to cope more easily with fluctuations in the market and in turn the value of the endowment.

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If you need a copy of the LRB please feel free to contact one of us or Senator Risser or Representative Cullen's office as noted above.

Thank you for your consideration.

WISCONSIN
BANKERS
ASSOCIATION

Testimony of the Wisconsin Bankers Association
Michael Semmann, Director Government Relations

Senate Committee
on

Veterans and Military Affairs, Biotechnology, and Financial Institutions

April 1, 2009

Testimony in support to Senate Bill 31

Chairman Sullivan and members of the Committee:

Thank you for the opportunity to testify on behalf of the Wisconsin Bankers Association (WBA) in support of Senate Bill 31 (SB 31). My name is Michael Semmann, Director Government Relations for WBA. The Wisconsin Bankers Association is the state's largest financial industry trade association, representing 300 commercial banks and savings institutions, their nearly 2,300 branch offices and 30,000 employees.

WBA and the members of the WBA Trust Section support the passage of SB 31, Uniform Prudent Management of Institutional Funds Act (UPMIFA). This bill and its rules govern investment of the funds of charitable organizations and total return expenditure of those funds. It establishes a prudent management investment regime derived from the Uniform Prudent Investor Act (which applies only to trusts) and a prudent total return expenditure based upon performance of the portfolio held by a charitable institution. It also provides for delegation of authority for investment to outside agents and reformation of donor restrictions on funds when these are so outdated that the original objective can no longer be honored.

The effects of SB 31 would be to insure that the best investment practices govern the actual investment of institutional funds and encourages growth of institutional funds while eliminating investment risks that threaten principal. By providing this guidance the bill assures that there are adequate assets in any institutional fund to meet program needs. Given the current fiscal and economic situation, the bill authorizes trustees to act in the best interest of the fund.

The bill withdraws obsolete rules governing prudent total return expenditure and provides a modern rule of prudence consistent with the rules that govern investment. It also eliminates differences in investment and expenditure rules that

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